

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GERALDINE BARABIN,

Plaintiff,

V.

SCAPA DRYER FABRICS, INC., et al.,

Defendants.

CASE NO. C07-1454JLR

ORDER IMPOSING SANCTIONS
ON ATTORNEY JAMES NEVIN

On April 9, 2018, the court ordered attorney James Nevin to show cause why he and his law firm Brayton Purcell LLP should not be sanctioned for a failure to comply with the court's orders. (OSC (Dkt. # 755).) During trial on April 2, 2018, Mr. Nevin quoted portions of a report while he was reading a deposition into the record. (*See id.* at 2.) Not only did the quoted portion discuss a theory of causation that the court had excluded in its previous *Daubert* order (*see id.* at 2-3; 2/12/18 Order (Dkt. # 698) at 30)), but the court had also excluded the report (Exhibit 176) as impermissible hearsay that

1 very morning (see OSC at 3; 4/2/18 Min. Entry (Dkt. # 736)). For these reasons, the
2 court ordered Mr. Nevin to explain why his behavior did not warrant a monetary sanction
3 of \$1,000.00 and a written reprimand on the docket. (See OSC at 4.)

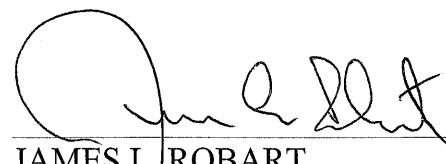
4 Courts have the inherent authority to “manage their own affairs so as to achieve
5 the orderly and expeditious disposition of cases.” *Chambers v. NASCO, Inc.*, 501 U.S.
6 32, 43 (1991) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630-31 (1962)). This
7 inherent authority includes the ability “to impose sanctions for bad faith, which includes a
8 broad range of willful improper conduct.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.
9 2001). Courts can also impose sanctions when a party willfully disobeys a court order.
10 See, e.g., *Aloe Vera of Am., Inc. v. United States*, 376 F.3d 960, 964-65 (9th Cir. 2004)
11 (citing *Fink*, 239 F.3d at 991).

12 The court appreciates that misunderstandings can occur, especially in a complex
13 trial containing numerous orders. (See Dkt.; Resp. (Dkt. # 772) at 1.) However, Mr.
14 Nevin’s violation of not one, but two court orders merits a response. The court is
15 particularly concerned about Mr. Nevin’s continued insistence that “no order of the
16 [c]ourt was violated” and that the court’s order to show cause was “based upon an
17 incorrect recollection.” (See Resp. at 1-2.) At trial, Mr. Nevin read the following to the
18 jury: “Quote . . . Some authorities even believe that a single, brief exposure might be
19 sufficient [to cause mesothelioma] end quote.” (4/2/18 Trial Tr. (Dkt. # 762) at 873:9-14
20 (quoting Ex. 176).) Simply put, reading a report that opines on the “every exposure”
21 theory violates the court’s order that excluded the “every exposure” theory. Likewise,
22 //

1 quoting from an excluded exhibit violates the court's order that excluded the exhibit.¹
2 The court finds that Mr. Nevin's repeated violations and misconduct constitute bad faith.

3 Accordingly, the court DIRECTS Mr. Nevin to pay \$1,000.00 in sanctions within
4 five (5) days of the date of this order. This order will additionally serve as a reportable
5 reprimand of Mr. Nevin and Brayton Purcell LLP.

6 Dated this 15 th day of June, 2018.

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8 JAMES L. ROBART
United States District Judge

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¹ Mr. Nevin's continued attempt to distinguish the excluded Exhibit 176 from the
21 testimony about Exhibit 176 is disingenuous. (See Resp. at 7-8.) The testimony in question was
22 not a description of the exhibit—rather, Mr. Nevin directly quoted the exhibit. (See 4/2/18 Trial
Tr. at 873:5-14.) If quoting an excluded exhibit renders the content admissible, then parties
could bypass any inadmissibility issue by simply reading the exhibit into the record; according to
Mr. Nevin, that qualifies as testimony about the exhibit—which is proper—rather than the
exhibit itself—which is not. The court rejects this artificial distinction.